UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1996/23/Add.2
12 March 1996

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 5 of the provisional agenda

QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS, INCLUDING PROBLEMS RELATED TO THE RIGHT TO ENJOY AN ADEQUATE STANDARD OF LIVING, FOREIGN DEBT, ECONOMIC ADJUSTMENT POLICIES AND THEIR EFFECTS ON THE FULL ENJOYMENT OF HUMAN RIGHTS AND, IN PARTICULAR, ON THE IMPLEMENTATION OF THE DECLARATION ON THE RIGHT TO DEVELOPMENT

HUMAN RIGHTS AND THE ENVIRONMENT

Report by the Secretary-General prepared in accordance with Commission resolution 1995/14

Addendum

The present document contains observations sent by the Government of Turkey and by the following non-governmental organizations; Human Rights Advocates and the International Indian Treaty Council.

GE.96-11222 (E)

Turkey

[Original: English]
[10 January 1996]

The Government of Turkey requested that the section on Turkey on page 89 of the report prepared by Mrs. Fatma Zohra Ksentini (E/CN.4/Sub.2/1994/9) be replaced by the following words:

> "The 1982 Constitution stipulates that every person has the right to live in a healthy and balanced environment. Environmental protection is a responsibility to be shared by the State and citizens."

Human Rights Advocates

[Original: English]
[19 January 1996]

There are four specific areas identified in Mrs. Ksentini's report on which we would like to provide specific comment: first, the relationship of serious environmental harm to existing human rights; second, the rights of the public to participate in environmental decision-making processes where there may be significant harm to the environment and human health; third, the debate on the emerging "right to environmental protection"; and fourth, involuntary environmental migration.

As we stated in our amicus curiae memorandum to the International Court of Justice, the potential for serious injury to human health and the tragic consequences of environmental disasters in the last two decades require that before large development projects are undertaken which could have substantial impacts on the environment, a State must require the completion of a comprehensive environmental impact assessment to identify the potential threats to the environment and human health, and alternatives or mitigation measures needed.

Rights to information and political participation are fundamental to the exercise of traditional human rights, because one's survival and well-being depend upon the knowledge of environmental risks and the ability to minimize or avoid them. Uninformed communities cannot adequately protect their lives, livelihood, property, cultural heritage and natural resources, nor can they call for reforms in their Government's environmental management policies. States must be held to an affirmative duty to assess the environmental and public health risks associated with activities under their jurisdiction or control, and to inform those persons potentially affected.

The recognition of such an obligation under human rights doctrine would guarantee a type of due process for persons affected by Government-sanctioned harm to the environment. An informed public can prevent the execution of an unsafe development project, lobby for the regulation of hazardous facilities, and take similar steps to protect itself from harm. Moreover, public involvement in environmental management can reduce the risk of political,

economic and cultural conflict that can lead to widespread human rights violations. Open public discussions would help build a broader consensus and overcome group differences.

This due process would be further strengthened by granting non-State actors the right to participate in intergovernmental decision-making. Such participation by those individuals and communities affected by the outcome of environmental projects will increase the credibility and force of the resulting standards. Given that international environmental laws and policies seek to regulate the behaviour of individual non-State actors, increased participation by non-State actors should increase the efficacy of global environmental protection and reduce the incidence of conflict.

The widespread recognition of the need to prevent this cause and effect relationship of ecological destruction and injury to life has led to the development of an emerging principle of international law that embodies a right to environmental protection. Today, a third of the world's nations have adopted constitutional or other national laws proclaiming such a right.

Nevertheless, whether such a right exists remains controversial. Furthermore, interested parties have yet to clarify the scope, content and enforceability of a "right to a healthy environment". States and human rights bodies must clarify the precise nature and content of such a right in order for it to protect people and their environment effectively. Until they do, procedural guarantees such as the right to participate in official environmental decision-making processes can serve as surrogate protection against environmental harm.

Increasingly, worldwide migration is a result of environmental degradation and unsustainable development practices which provide questionable benefits for millions of people. The migration of peoples across borders, though not a new phenomenon, has drawn considerable international attention in recent years. According to the International Labour Organization and the International Organization for Migration, at least 70 million people fall within recognized categories of refugees and migrants, or nearly 2 per cent of the world's population - 1 out of every 50 people.

As Mrs. Ksentini noted, millions more are displaced within their own countries. Many of these population movements are directly linked to environmental problems, such as the annual cutting of 11 million hectares of tropical rainforests and the loss, globally, of 24 billion tons of topsoil each year. Our investigation confirms that, more and more, people are displaced by accidents in the manufacture and transport of hazardous chemicals, the dumping of toxic waste, the contamination of waterways and the exploitation of natural resources.

Development models and schemes often fail to deliver or provide for the most basic material and social needs of affected peoples. Many projects are authorized without informing the affected population or allowing the local community to participate in the environmental decision-making process. Accordingly, government policies often suffer from a lack of effective

resettlement planning and result in serious human consequences. Moreover, the magnitude of these forced movements can seriously threaten the fragile ecosystems of the areas in which people are resettled.

The reinterpretation and expansion of existing human rights should be accompanied by broadening access to human rights institutions and national tribunals. The recommendations of Mrs. Ksentini provide a useful framework for further clarification by the Commission on Human Rights of how to begin addressing serious forms of environmental harm threatening life, health and culture, and which constitute human rights violations. We support her recommendation that the Commission appoint a special rapporteur to investigate such abuses and how the international community can best act to develop standards to prevent future suffering from these events.

The increasing significance of environmental crises around the world warrants the development of international environmental human rights standards. The Governments participating in the International Conference on Environment and Development did not adopt a legal framework for protecting environmental victims, nor can its successor body, the Commission on Sustainable Development, provide the needed investigations and relief. Therefore, any meaningful protection must come from within the human rights system.

International Indian Treaty Council

[Original: English]
[30 December 1995]

The final report submitted by Ms. Ksentini was the culmination of extensive and thorough research that also involved examining the close relationship which exists between the right to development, human rights and the right to a healthy environment. Ms. Ksentini gave particular attention to the vulnerability of indigenous peoples to ecological hazards and recognized the need for a multifaceted approach to this issue. Indeed, the study has made it possible to outline the scope of environmental rights, having collected the basic legal instruments underpinning environmental rights, and demonstrates that the climate is now ripe to move from environmental law to environmental rights.

Accordingly, the IITC endorses all the recommendations made by Ms. Ksentini, namely:

(a) A coordination centre should be set up to deal with the question within the United Nations Centre for Human Rights;

(b) A special rapporteur of the Commission on Human Rights should be appointed with a mandate similar to that generally given to special rapporteurs on thematic questions;

(c) A seminar should be held under the auspices of the Centre for Human Rights to help formulate practical recommendations on the way in which the right to a satisfactory environment could be rationally incorporated into the activities of human rights bodies;

(d) The rapid adoption of the draft declaration on the rights of indigenous peoples, finalized by the Working Group on Indigenous Populations.

The IITC believes that the following issues require further elaboration. The nuclear age has been especially hard on native peoples. In North America, the South Pacific, and throughout the world, uranium mining, nuclear weapons testing, commercial nuclear fuel manufacturing, and even human radiation experimentation have taken a heavy toll on Native Americans. Indigenous peoples' lands must be declared nuclear-free zones.

Environmental racism is a pervasive form of racial discrimination, condoned if not perpetrated by Governments through ethnic and class selection to position certain groups in harm's way. It ranges from contamination from biological experimentation to the uncontrolled use of pesticides and other industrial poisons, and the deliberate dumping of nuclear toxic and hazardous wastes on indigenous peoples' lands and near communities of people of colour. Indigenous communities are most vulnerable to toxic poisoning. They are often land based and rely on the natural environment for their survival. Not only do they suffer a higher incidence of mortality due to exposure to toxic matter, but their entire means of subsistence is poisoned and destroyed.

Studies of environmental racism demonstrate that it impacts most severely and disproportionately upon indigenous peoples. One example among many of indigenous peoples being severely harmed from the cradle to the grave by environmental racism is the negative effects of the mining, milling, and enrichment cycle that produces uranium and nuclear weapons in the United States.

Governments and institutions must honour treaties, agreements and other constructive arrangements made with indigenous peoples. The principle of reciprocity should be taken into account when discussing indigenous lands and land use, and recognition of and understanding for traditional indigenous spirituality and political and legal systems other than the "modern State" should be manifested. It must be recalled that it was the colonial period of invasions which imposed itself upon indigenous peoples, led by a Eurocentric racist and hegemonistic view of terra nullius and "inferior societies" of indigenous peoples which continues to this day.

Concerning self-determination, Mrs. Ksentini's final report does not go far enough to describe the myriad causes of violations affecting indigenous peoples committed by colonial Governments which many times are associated with political, economic and military interests. It can be said that this has been fostered by the inherent racism of countries which twist the intent of human rights in order to deny the basic right of self-determination to indigenous peoples, which is essential to our survival as cultures.